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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

AMOCO PRODUCTION COMPANY, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

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No.

AMOCO PRODUCTION COMPANY, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

Amoco Production Company, formerly Pan American Petroleum Corporation,[1] prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered on July 14, 1971, granting enforcement of an order issued by the Board against Amoco Production Company.

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[1]At an earlier date, the Company's name was Stanolind Oil & Gas Company.

OPINIONS BELOW

The decision and direction of election of the Regional Director of the National Labor Relations Board (App. B, *infra*, pp. 5-10) are unreported. The decision and order of the National Labor Relations Board (App. B, *infra*, pp. 10-21) are reported at 179 NLRB No. 30. The opinion of the Court of Appeals (App. C, *infra*, pp. 22-30), is reported at 444 F.2d 328.

JURISDICTION

The judgment of the Court of Appeals (App. C, p. 30) was entered on July 14, 1971. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1), and Section 10(e) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether the Court below could properly review the actions of the National Labor Relations Board where the Board reversed its policy as to the inappropriateness of the unit sought and failed to articulate the reasons for its inconsistent determinations.

2. Whether the Court below may accept and utilize appellant counsel's *post hoc* rationalizations for Board actions and substitute its discretion for that of the Board's.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 76 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth in App. E, *infra*, p 33.

STATEMENT

The Facts

On petition of the Union and over the protest of Peti-

tioner as to the appropriateness of the bargaining unit, the Board's Regional Director certified the Union as bargaining representative of all hourly rate Producing Department employees and three monthly rate gas technicians in Petitioner's Farmington Area, one of seven such Areas in Petitioner's Denver Division. Petitioner declined to bargain with the Union in order to challenge the appropriateness of the Area unit certified by the Board. A request for review of the Regional Director's decision was denied as was Petitioner's request for a hearing in the subsequent unfair labor practice proceeding. The facts may be summarized as follows:

Petitioner conducts its domestic operations through four Divisions: New Orleans, Houston, Fort Worth and Denver (R. 7, 12, 13). These Divisions embrace all but four of the 50 States. (Map, Company Exhibit 1).

The organizational structure of each Division is basically the same (R. 13, 16-17, 101-102). The Denver Division, with which we are concerned, is under the supervision of a Vice President and Division Manager (R. 13, 16-17, 101-102). Its division-wide Producing Department is divided into three geographical Districts which in turn are subdivided into seven geographical Areas (R. 18-23, 25-26, 74). Oil and gas is produced in each of the seven Areas, including the Farmington Area which is specifically involved in the case at bar. Organizationally, Producing Department Areas have remained substantially the same since 1936 (R. 39).

Area boundary lines are frequently changed (R. 23, 103-109). The boundary lines of the Farmington Area were changed after the hearing in the case at bar to embrace the State of Nevada. More significantly, Areas are established and discontinued with a high degree of frequency throughout the domestic Divisions (R. 103-109).

Fourteen such Areas were discontinued and nine established during an eight-year period (R. 24, 103-109). In the Denver Division four Areas were established and three discontinued during the same period (R. 25, 103-109). The Denver Division itself has been a continuing organizational entity for 34 years (R. 38-41).

Operating conditions are similar throughout the Denver Division. Farmington Area job classifications are used in all other Areas and job duties and skill requirements are uniform division-wide (R. 23, 25-26, 71). Employment rights in terms of job opportunities are likewise division-wide (R. 28). There is no Area or District seniority (R. 28). Both monthly rate and hourly rate employees are frequently transferred between Areas within the Division (R. 26-27). Promotional and demotional policies are uniform throughout the division (R. 28). Salary administration, safety, training programs, benefit plans, grievance procedure and labor policy are administered division-wide (R. 34-35, 110-114).

The Division Manager has centralized control of operations and has full authority with respect to collective bargaining matters (R. 17, 101-102). He is responsible for making the final decision in the processing of grievances, for the negotiation of labor contracts and for the administration of labor policy within the Division (R. 35-36, 110-113).

The Board's Prior Decisions

The Board has twice held in cases involving Petitioner that employees in a Producing Department Area — such as the Farmington Area — do not constitute an appropriate unit for purposes of collective bargaining (App. A, pp. 1-4). In cases 16-R-967 and 16-R-976 in which the Union sought separate bargaining units in two of the ten Areas in Peti-

tioner's North Texas-New Mexico Division, now called the Fort Worth Division, the Board concluded the requested area units inappropriate "[I]n view of the tentative character of the area lines, the frequent interchange of employees, and the uniformity of working conditions and policies throughout the Division . . . ." 54 NLRB 412, 414 (1944) (App. A. p. 4). The decision in these two cases established a pattern for denying less than division-wide units in two subsequent unreported cases by the Board: 16-RC-1 (the "southern part," and "Gulf Coast Area" of Texas) and 39-RC-408 (Petitioner's Hastings District).

The reasoning in the Area cases was reaffirmed by the Board in two plant cases involving Petitioner. In *Stanolind Oil & Gas Company*, 98 NLRB 973, 975 (1952), the Board observed

> We note that (1) interchangeability of employees and (2) flexibility of area boundaries within divisions due to decline or increase in crude oil production were stressed by the Board in its original decision, which — by dismissing a petition for two areas out of a division — set the pattern of division-wide bargaining.

The Board's reasoning in this case was approved by the lower Court herein. *N.L.R.B.* v. *Stanolind Oil & Gas Company*, 208 F.2d 239 (10 Cir., 1953).

Later, in *Stanolind Oil & Gas Company*, 116 NLRB 1208 (1956), the Board again stressed the criteria dealing with the flexibility of Area boundaries, asserting

> In addition we note, as we did in the *Elk Basin* proceeding, that the factor of flexibility in area boundaries which influenced the Board in earlier cases to find appropriate division-wide as opposed to area units, has no application to a unit composed of a relatively stable group of plant employees.

The Union's Organizational Activities

The Independent Oil Workers Union, the Union involved in the instant case, has organized and represents hourly rate Producing Department employees on a division-wide basis in three of the Company's four Divisions: Fort Worth, Houston and New Orleans, the New Orleans organizational activity taking place in 1968.

Having succeeded in organizing three of the Divisions, it then turned its attention to the remaining Denver Division, entirely unorganized with the exception of two Wyoming plants.[2] In a drastic departure from prior organizational strategy, the Union sought to carve out one of seven areas in the Denver Division — the Union apparently only having been successful in organizing employees in the Farmington Area, embracing approximately 25 of the 280 unrepresented employees in the Division (R. 75, 181). The Union admits all hourly rate employees in the Denver Division Producing Department are eligible for membership and that if its organizational activities are successful it will take a Division-wide unit (R. 116-118, 129-132, 151-152). It has also admitted that to the extent that its organizational activities are otherwise successful, it will take a smaller unit (R. 182-187).

The Union does not represent employees in a separate Area unit anywhere in the Company. Nor has any such Area unit ever been established by the Board in its many contacts with the Petitioner in representation cases over a 25-year period. The Board's first acquiescence to a union's request for an Area unit occurs in this case.

The Decision of the Court Below

The Court below (App. C, pp. 22-30), which had juris-

[2]Employees in the Denver Division rejected unionization in a Division-wide election in 1947. (Case No. 17D-R-37).

diction of the proceedings pursuant to Sec. 10(e) of the Act, ordered enforcement of the Board's order asserting that there was substantial evidence to support the Regional Director's conclusion and that the Board has made no unexplained repudiation of past policy.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court below is erroneous and presents a square conflict with the decision of this Court in *N.L.R.B.* v. *Metropolitan Life Insurance Company*, 380 U.S. 438 (1965).

In the earlier cases involving Petitioner the Board held Area units to be inappropriate for purposes of collective bargaining "[I]n view of the tentative character of the area lines, the frequent interchange of employees, and the uniformity of working conditions and policies throughout the Division . . . ." (App. A, p. 4)

All of these criteria are present in the instant case. The Regional Director acknowledges the uniformity of working conditions, and the record evidence reflects that policies are uniform throughout the Division. The Court below acknowledges the frequent transfer of employees between Areas, and the tentative character of Area boundaries is undenied. Yet the Board's reversal of policy fails utterly to articulate the reasons for its inconsistent determinations. In fact, in its decision and order the Board avoids its earlier inconsistent decisions by ignoring them — in their entirety. Nor does the Regional Director's decision make any attempt to explain the policy reversal. The Regional Director gives no explanation as to why the tentative character of Area boundary lines is critical in

the early decisions and of no concern in the instant case.

The Board's naked change in policy parallels the Union's drastic change in organizational technique. It is precisely in this type of situation when the Union deviates from its prior organizational pattern and the Board without explanation accedes to the Union's wishes in a reversal of long-standing policy that one is forced to conclude that the unit determination is controlled by extent of organization in contravention of Section 9(c)(5) of the Act. Yet the reviewing Court gives no consideration to this facet of the case.

Further, the reviewing Court has erroneously accepted the *post hoc* rationalizations of Counsel in the Board's brief and substituted its discretion for that of the Board in an attempt to establish a stable geographic unit and a group of employees distinct from similar employees throughout the Division. Many of the alleged "findings" in the Board's brief lack support in and are contrary to the record evidence. See Comparison Table, App. D, pp. 31-32.

2. Clearly, the questions presented are of importance in the administration of the National Labor Relations Act, and in the review of administrative decisions by the lower courts.

3. The recurring nature of the problem is evident. Inconsistent determinations by the Board have commanded the attention of this Court and of fifty percent of the Courts of Appeals in recent years. *N.L.R.B.* v. *Metropolitan Life Insurance Company*, 380 U.S. 438 (1965), *supra*; *Metropolitan Life Insurance Company* v. *N.L.R.B.*, 327 F.2d 906, 909 (1 Cir., 1964); *N.L.R.B.* v. *Capital Bakers, Inc.*, 351 F.2d 45, 49 (3 Cir., 1965); *N.L.R.B.* v. *Industrial Rayon Corporation*, 291 F.2d 809, 811-812 (4 Cir., 1961); *N.L.R.B.* v. *Pioneer Natural Gas Company*, 397

F.2d 573, 576 (5 Cir., 1968); *Rayonier Incorporated* v. *N.L.R.B.*, 380 F.2d 187, 189 (5 Cir., 1967); *N.L.R.B.* v. *Groendyke Transport, Inc.*, 372 F.2d 137 (10 Cir., 1967), cert. den. 387 U.S. 939. Also, see *Burinskas* v. *N.L.R.B.*, 357 F.2d 822, 827 (CA DC, 1966).

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

J. W. Howard

Attorney for Amoco Production Company, Petitioner

September, 1971

APPENDIX A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of STANOLIND OIL AND GAS COMPANY
and OIL WORKERS INTERNATIONAL UNION, C.I.O.

Cases Nos. 16-R-967 and 16-R-976 respectively.
— Decided September 20, 1944

DECISION
AND
ORDER

STATEMENT OF THE CASE

Upon petitions duly filed by Oil Workers International Union, C. I. O., herein called the CIO, alleging that questions affecting commerce had arisen concerning the representation of employees of Stanolind Oil and Gas Company, Fort Worth, Texas, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before John A. Weiss, Trial Examiner. Said hearing was held at Odessa, Texas, on August 7 and 8, 1944. The Company, the CIO, and Stanolind Employees Bargaining Agency, herein called the Independent, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board. The Company's request for oral argument is hereby denied.

Upon the entire record in the case, the Board makes the following:

FINDING OF FACT

I. THE BUSINESS OF THE COMPANY

Stanolind Oil and Gas Company, a subsidiary of Standard Oil Company of Indiana, is a Delaware corporation having its principal office in Tulsa, Oklahoma. It is engaged in the production of gas and oil in numerous States of the United States. This proceeding is concerned with the North Texas-New Mexico Division of the Company, herein called the Division. In the State of Texas the Company produces approximately 50,000 barrels of crude oil daily, of which 75 percent is shipped to places outside the State of Texas.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Oil Workers International Union, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Stanolind Employees Bargaining Agency, unaffiliated, is a labor organization admitting to membership employees of the Company.

III. THE ALLEGED QUESTIONS OF REPRESENTATIONS; THE ALLEGED APPROPRIATE UNITS

In Case No. 16-R-967, the CIO seeks a unit of all production and maintenance employees in the North Cowden area, excluding clerks and supervisory personnel. In Case No. 16-R-976, the CIO seeks a separate unit of all production and maintenance employees in the Hendrick area including clerks, but excluding supervisory personnel. The Company and the Independent contend (1) that the contract now in effect between the Company and the Independent is a bar to this proceeding, and (2) that the units sought by the CIO are inappropriate.

On January 31, 1938, the Company and the Independent executed an agreement recognizing the Independent as the bargaining representative for all production and maintenance employees including clerks in the Division. The contract prescribed a procedure to be followed in dealing with matters relating to collective bargaining between the parties but contained no substantive provisions respecting wages, hours, working conditions or seniority. The contract was to run for 2 years and from year to year thereafter unless either party served written notice of termination at least 60 days prior to any anniversary date. No notice of termination has been served by either party to the contract. The Company claims that the present petitions are premature since the anniversary date of the contract is January 31, 1945. A contract of the type here presented, i. e., without substantive provisions respecting wages, hours and working conditions, the vital elements of any collective bargaining contract, does not achieve stability in labor relations and, accordingly, is inoperative as a bar to a representation proceeding.[1]

The Division is divided into 10 areas, all of which are under the general supervision of the Division Superintendent. Area lines are flexible; they are changed from time to time for convenience in supervision. At the present time, the Company comtemplates changing the lines of the North Cowden area. Throughout the Division, wages, hours, working conditions, and grievance procedure are the same. Workers are interchangeable within the Division and transfers of employees from one area to another are frequent. All personnel records are kept at Division headquarters and responsibility for industrial relations throughout the Division rests with the Division

[1] *Matter of Standard Oil Company of Indiana (South Bend Division)*, 56 N. L. R. B. 1101; *Matter of Corn Products Refining Company*, 52 N. L. R. B. 1324.

Superintendent. Pay rolls are made up in the area offices and are then sent to Division headquarters where checks are made out and then mailed back to the areas for distribution to the workers. As previously stated, the CIO is seeking to establish separate bargaining units in 2 of the 10 geographic areas into which the Division is divided. In view of the tentative character of the area lines, the frequent interchange of employees, and the uniformity of working conditions and policies throughout the Division, we are of the opinion, and find, that the units sought by the CIO are inappropriate for the purposes of collective bargaining, and we shall dismiss the petition filed herein.[2]

Since the bargaining units sought to be established by the petition are inappropriate, we find that no question has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) of the National Labor Relations Act.

ORDER

Upon the basis of the above findings of fact and the entire record in the case, the Board hereby orders that the petition for investigation and certification of representatives of employees of Stanolind Oil and Gas Company, Fort Worth, Texas, filed by Oil Workers International Union, affiliated with the Congress of Industrial Organizations, be, and it hereby is, dismissed.

[2]Cf. *Matter of Gulf Oil Corporation*, 52 N. L. R. B. 880, wherein the Board in finding appropriate a unit confined to two pools within an administrative division, pointed out that the employees in the unit sought constituted a fairly stable and homogeneous group, and that the petitioning union was the only labor organization seeking or prepared to bargain for any of the division employees, neither of which factors is present in the instant case. The Board further emphasized that it did not imply thereby that it would find appropriate in all circumstances a unit confined to single pools or other portions of administrative divisions of the Company, but would consider each case on its merits.

APPENDIX B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PAN AMERICAN PETROLEUM CORPORATION
Employer

AND

INDEPENDENT OIL WORKERS UNION, LOCAL 16
Petitioner

CASE NO. 28-RC-1855

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

[1]After the close of the hearing, the Employer submitted a Motion to Correct Record. Inasmuch as said motion pertains to insubstantial matters and is unopposed, it is hereby granted.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:[2]

[2]The Petitioner seeks a unit of all producing, operating and maintenance employees employed in the producing department at the Employer's Farmington Area, Farmington, New Mexico. The Employer contends that the only appropriate unit consists of all of its producing department employees in its Denver Division, of which the Farmington Area is a part. In addition, although the parties are in substantial agreement as to the composition of the unit, they disagree as to the unit placement of gas technicians. Petitioner, contra to the Employer, would include gas technicians.

The Employer, with its main office and administrative headquarters located at Tulsa, Oklahoma, is engaged primarily in the exploration for and production of oil and gas. Operationally, the Employer's domestic operations are divided into four divisions, namely, New Orleans, Houston, Fort Worth and Denver.

The Denver Division, the Division involved herein, embraces approximately fifteen states including Alaska. It consists of several departments such as exploration, administrative, law and producing. The Producing Department, the department involved herein, is divided into three geographical areas, namely, North District, Northwest District and South District. The three Districts, in turn, are subdivided into seven producing areas which embrace oil and gas fields where the producing department employees are engaged in producing oil and gas. The South District, which includes the Area involved herein, embraces three Areas: Riverton, Wyoming; Kimball, Nebraska and Farmington, New Mexico.

The Denver Division is under the supervision of a vice-president and division manager who is officed at the Division headquarters in Denver, Colorado. The aforementioned staff departments are located at the Division office and perform functions relating to the operation of oil wells, legal, financial, programming and purchasing for the en-

All production, operating and maintenance employees in the producing department of the Em-

(²*Continued*)

tire Division. The Division headquarters authorizes the drilling of wells throughout the Division; selects the drilling contractors and awards the contracts for such operations; furnishes the expertise with respect to the drilling operations through the Division Drilling superintendent; and joint interests operations are handled on a division-wide basis by the joint interests superintendent.

The Farmington Area maintains an office at Farmington, New Mexico, and is under the supervision of an Area superintendent. It embraces Arizona, parts of Utah and Colorado and the Western half of New Mexico. Although there has been some change in the boundary lines of some areas, there is no evidence of any plans to change the boundary lines of the Farmington Area. The Area Superintendent is responsible for the operations in the Farmington Area and reports to the District superintendent, who, in turn, reports to the Division Production manager officed at Denver.

The employees in the Farmington Area work under the direct supervision of an area foreman and several field foremen. Although their job classifications and duties are the same as those throughout the Division, during the past three years only three of the hourly employees transferred between Areas in the Division involved employees in this Area. The three transfers were at the request of the employees. The Employer states that employment rights in terms of job opportunities and promotions are Division-wide. However, the record reveals no evidence of promotions or job changes into or out of this Area. As to employee grievances, although the Division manager, who has responsibility for labor relations matters throughout the Division, has the final say, the procedure provides for them to be processed first on the local area level.

While I am not unmindful of the control which appears to flow from the Employer's Division office and the uniformity of working conditions throughout the Division, considering the fact that the Area superintendent who is responsible for the day-to-day operations in the Area, apparently directs the work of the employees in the Area and makes certain local decisions; the lack of any definite plans to change the boundary line of this Area; and the limited amount, if any,

ployer's Farmington Area at Farmington, New Mexico, including gas technicians[3], excluding all office clerical and professional employees, guards, watchmen and supervisors as defined in the National Labor Relations Act, as amended.

Direction of Election

An election by secret ballot will be conducted by the

([2]*Continued*)
of interchange and transfer of employees; it appears on the basis of the foregoing and the record as a whole that the unit sought by Petitioner is comprised of a stable and identifiable group of employees with common interests and is therefore appropriate. Moreover, there is no history of bargaining for this Division and even if the division-wide unit could also be deemed an appropriate unit, no union seeks to represent these employees on such basis. *Gulf Oil Corporation*, 52 NLRB 880; Cf. *Stanolind Oil and Gas Company*, 58 NLRB 412; See *Martin-Marietta Corporation*, 139 NLRB 925; *Stanolind Oil and Gas Company*, 116 NLRB 1208.

[3]The Employer employs approximately twenty-five employees in the Producing Department in the Farmington Area classified as pumpers, special pumpers isolated, roustabouts and operator technicians. Although the parties are in agreement with respect to the inclusion of these employees, as noted previously, Petitioner, contra to the Employer, would also include three unlimited hour-monthly rated employees classified as gas technicians. The record reveals that the primary duty of the gas technicians is to take measurements and tests to verify on a periodic basis the daily production which has been recorded and charted by the pumper. Although the gas technicians are officed in an area separate from the pumpers, and work under different supervision, some have been pumpers and both pumpers and gas technicians perform some duties at the meter house on the well location. They also exchange information regarding the producing status of wells. Since the record indicates that the gas technicians are nonsupervisory employees, and their duties apparently are not substantially different from the pumpers whom the parties agree should be included, I shall include the gas technicians in the appropriate unit.

undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[4] Those eligible shall vote whether

[4]An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for the Twenty-eighth Region within 7 days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 7011, U. S. Courthouse and Federal Building, 500 Gold Avenue, S.W., P. O. Box 2146, Albuquerque, New Mexico 87103, on or before December 30, 1968. Under Board Procedures, no extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear, Inc.*, 156 NLRB 1236.

(or not) they desire to be represented for collective-bargaining purposes by INDEPENDENT OIL WORKERS UNION, LOCAL 16.

/s/ Charles M. Henderson
Regional Director,
Region 28

Dated December 23, 1968
at: Albuquerque, New Mexico

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
PAN AMERICAN PETROLEUM CORPORATION
AND
INDEPENDENT OIL WORKERS UNION, LOCAL 16
CASE 28-CA-1877

DECISION AND ORDER

Upon a charge filed by Independent Oil Workers Union, Local 16, herein called the Union, the General Counsel of the National Labor Relations Board by the Regional Director for Region 28, issued a complaint, dated April 30, 1969,[1] against Pan American Petroleum Corporation, herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served upon Respondent.

[1]All dates refer to 1969

With respect to the unfair labor practices, the complaint alleges, in substance, that on February 19 the Union was duly certified by the Regional Director for Region 28 as the exclusive bargaining representative of Respondent's employees in the unit found appropriate,[2] and that, since on or about April 3, Respondent has refused and is refusing to recognize or bargain with the Union as such exclusive bargaining representative, although the Union has requested and is requesting it to do so. On May 13, Respondent filed its answer to the complaint, in which it admitted in part and denied in part the allegations contained therein, and requested that the complaint be dismissed.

On May 28, the General Counsel filed with the Board a Motion for Summary Judgment and Issuance of Board Decision and Order, alleging that no factual issues had been raised that had not been litigated in the representation proceeding, and requesting, in view of the admissions contained in Respondent's answer, that the Board enter judgment against Respondent on the pleadings, making findings of fact as alleged in the complaint and admitted in the answer and concluding that, as a matter of law, Respondent has violated Section 8(a)(5) and (1) of the Act, as alleged in the complaint and denied in the answer, and order an appropriate remedy therefor. On June 3, Respondent filed its Motion in Opposition To Summary Judgment and to Request Hearing.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

[2]Decision and Direction of Election in Case 28-RC-1855 (not published in NLRB volumes); on February 4, the Board denied a request for review.

Upon the entire record in this case, the Board makes the following:

RULING ON THE MOTION FOR SUMMARY JUDGMENT

In its statement in opposition to the General Counsel's Motion, Respondent contends, as it did in its answer to the complaint that, while the major facts set forth by the Regional Director were true at the time of his Decision, nevertheless he erred in finding the unit sought by the Union to be an appropriate one, and the Board erred in adopting his finding. Respondent argued to the Regional Director, *inter alia,* that the Farmington Area sought by the Union was nothing more than an integral part of its South District, which in turn was an integral part of its Denver Division; that areas, districts, and sometimes even divisions were for valid business reasons realigned; and that the daily operation of all its areas depended upon the supervision of their Division Production Manager and the District Superintendents under him. For those and other reasons, Respondent contended that any unit including less than all producing department employees throughout the Denver Division was inappropriate. The Regional Director rejected these arguments, and found that the Farmington Area alone was appropriate. Respondent now contends that the Board erred in upholding the Regional Director's unit finding; it further contends that, since the hearing in the representation case, certain changes have taken place in the South District and the Farmington Area which bolster its original arguments and, at least, provide a ground for now finding that the unit the Union sought was inappropriate; and that the matter should be set for hearing. We find Respondent's contentions without merit.

On February 11, following a Decision and Direction of Election by the Regional Director for Region 28, a request for review by Respondent, and a denial of that request by the Board, a majority of Respondent's employees in the unit found appropriate, by secret ballot, designated the Union as their representative for the purposes of collective bargaining. No objections were filed to conduct affecting the results of that election and, on February 19, the Union was certified as the exclusive bargaining representative of the employees in the appropriate unit.

In its answer, Respondent admits that on or about March 28 the Union requested that Respondent meet with it for the purpose of collective bargaining, and that since on or after April 3 Respondent has refused to meet for that purpose.

At the representation hearing, evidence was taken with regard to Respondent's total operations in its Farmington Area, the supervisory structure existing within its districts and the Denver Division in particular, the degree of interchange and transfer of employees among areas and districts, and the frequency of realignment of areas and districts.

The Regional Director found:

> "While I am not unmindful of the control which appears to flow from the Employer's Division office and the uniformity of working conditions throughout the Division, considering the fact that the Area superintendent who is responsible for the day-to-day operations in the Area, apparently directs the work of the employees in the Area and makes certain local decisions; the lack of any definite plans to change the boundary line of this Area; and the limited amount,

> if any, of interchange and transfer of employees; it appears on the basis of the foregoing and the record as a whole that the unit sought by Petitioner is comprised of a stable and identifiable group of employees with common interests and is therefore appropriate. Moreover, there is no history of bargaining for this Division and even if the division-wide unit could also be deemed an appropriate unit, no union seeks to represent these employees on such basis."

The Regional Director directed an election in a unit comprising the Farmington Area alone. The Board denied Respondent's request for review of the Regional Director's decision.

At the time of the hearing, the Farmington Area embraced all or parts of 4 States; the South District embraced 3 areas, including Farmington; and the Denver Division embraced 3 districts. Respondent states that the Farmington Area now embraces all or parts of 5 States; the South District now embraces 4 areas, including Farmington; the Denver Division now has only 2 districts; these administrative changes have wrought a change in the geographical scope of supervisory authority on both the district and the area levels; there have been 5 transfers among areas in the Denver Division since the hearing; and, since the hearing, the Union has agreed to an initial divisionwide contract in another of Respondent's divisions. On these facts, Respondent seeks to have the Board reverse the previous finding as to the appropriate unit.

Whether the unit sought was an appropriate one when the Board denied review of the Regional Director's direction of election depended upon the facts and circumstances then existing. The Regional Director found the unit sought was an appropriate one, and the Board affirmed that finding by denying review. The matters

raised in that proceeding may not be relitigated here. Section 102.67(f), National Labor Relations Board Rules and Regulations, Series 8, as amended. Nor do the administrative changes or additional transfers now related by Respondent persuade us to find differently. We accept as true all that Respondent offers. Since the hearing in the representation case, the geographical boundaries of the districts and areas within the Denver Division have changed. As a result, the geographical scope of the supervision of the District Production Superintendents, and the Area Superintendents have been broadened. While the Farmington Area, with which we are primarily concerned, has been expanded to include part of a fifth State, neither the responsiblity of the Area Superintendent nor the overall supervisory structure from area to district to division has been altered. None of the factors upon which the Regional Director relied in finding the Farmington Area "a stable and identifiable group of employees with common interests" have changed.[3] Accordingly, we hereby find that the new facts offered do not render inappropriate the unit previously determined.

The General Counsel's motion averred that, following a Board-conducted secret-ballot election, the Union was certified as collective-bargaining agent of the producing department employees in Respondent's Farmington Area, that thereafter the Union demanded and Respondent refused to bargain with the representative so chosen, that

[3]The fact that there have been five additional transfers of employees "between Areas in the Denver Division" does not compel us to find otherwise. Neither are we persuaded by the agreement of the Union to a division-wide unit in Respondent's New Orleans Division, subsequent to the hearing in the representation case, to depart from the original finding that the Farmington Area is an appropriate unit. When making that decision, there were in existence contracts between the Union and Respondent in other division-wide units.

Respondent's answer to the complaint admits all pertinent facts with the addition only of the administrative changes and additional factors discussed above, that these changes and factors are not disputed but do not alter the original unit finding, and that there are therefore no matters requiring hearing before a Trial Examiner. We agree. Accordingly, the General Counsel's Motion for Summary Judgment is hereby granted. On the basis of the record before it, including the General Counsel's motion and Respondent's opposition thereto, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and at all times material herein has been, a corporation with its principal office and place of business at Tulsa, Oklahoma, and is engaged in the exploration for and production of oil and gas in several States of the United States, including an operation in the Farmington, New Mexico, area. During the 12 months preceding the issuance of the complaint herein, Respondent purchased and had delivered to its Farmington Area materials valued in excess of $50,000, which were transferred to the Farmington Area from States other than those included within the Farmington Area.

Respondent admits, and we find, that it is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Independent Oil Workers Union, Local 16, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

At all times material herein the following employees have constituted and now constitute a unit appropriate for purposes of collective bargaining within the meaning of the Act:

> All production, operating and maintenance employees in the producing department of the Employer's Farmington Area at Farmington, New Mexico, including gas technicians, excluding all office clerical and professional employees, guards, watchmen and supervisors as defined in the Act.

B. *The Request to Bargain and Respondent's Refusal*

A majority of the employees of Respondent in said unit having designated the Union as their representative for the purposes of collective bargaining with Respondent, the Regional Director duly certified the Union as the exclusive bargaining representative of the employees in said unit, and the Union continues to be such representative. We find that the Union at all times since February 19 has been and now is the exclusive bargaining representative of all the employees in the appropriate unit described above, within the meaning of Section 9(a) of the Act; that the Union requested and is continuing to request Respondent to bargain collectively with it as the exclusive bargaining representative of all the employees in the appropriate unit; that Respondent has since April 3 refused to bargain collectively with the Union as such representative; and that, by such refusal, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The acts of Respondent set forth in Section III, above, occurring in connection with its operations as described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial year of certification as beginning on the date the Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See: *Mar-Jac Poultry* Company, Inc. 136 NLRB 785; *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enfd. 328 F.2d 600 (C.A. 51, cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421, enfd. 350 F.2d 57 (C.A. 10).

CONCLUSIONS OF LAW

1. Pan American Petroleum Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Independent Oil Workers Union, Local 16, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production, operating and maintenance employees in the producing department of the Employer's Farmington Area at Farmington, New Mexico, including gas technicians, excluding all office clerical and professional employees, guards, watchmen and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since February 19, the above-named labor organization has been and is the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing, on or about April 3, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive representative of all its employees in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and has thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a) (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Pan American Petroleum Corporation, Farmington, New Mexico, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collective concerning rates of pay, wages, hours, and other terms and conditions of employment with Independent Oil Workers Union, Local 16, as the exclusive and duly certified bargaining representative of its employees in the following appropriate unit:

> All production, operating and maintenance employees in the producing department of the Employer's Farmington Area at Farmington, New Mexico, including gas technicians, excluding all office clerical and professional employees, guards, watchmen and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its jobsites in its Farmington Area copies

of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 28 shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 28, in writing, within 10 days from the date of this Decision and Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D. C. October 16, 1969.

John H. Fanning,_____Member

Gerald A. Brown,_____Member

Sam Zagoria,_____Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

[4]In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX C

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

NO. 287-70 — MAY TERM, 1971

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
PAN AMERICAN PETROLEUM CORPORATION,
Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD

June 21, 1971

Before LEWIS, Chief Judge; McWILLIAMS and DOYLE, Circuit Judges

LEWIS, Chief Judge

The National Labor Relations Board seeks enforcement of an order issued October 16, 1969, which would require respondent to bargain collectively with the Independent Oil Workers Union, Local 16, as the exclusive Bargaining representative of the company's production, operating and maintenance employees, including gas technicians, in the producing department of the employer's Farmington Area at Farmington, New Mexico. Respondent admits its refusal to bargain, but denies the commission of an unfair labor practice under sections 8(a)(1) and (5) of the National Labor Relations Act, 29 U.S.C. §§ 151 et. seq., by asserting that the Board did not validly determine and certify an appropriate bargaining unit.

Section 9(b) of the Act provides that "[t]he Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof . . . ." The courts have uniformly recognized that this section gives the Board wide discretion in determining the appropriate bargaining unit in each case and that such determination will not be set aside by the reviewing court unless it is arbitrary or capricious. *See, e.g.*, Packard Motor Car Co. v. NLRB, 330 U.S. 485, 491; Mountain States Tel. & Tel. Co. v. NLRB, 10 Cir., 310 F_2 478, 479-80.

Pan American Petroleum Corporation, formerly Stanolind Oil and Gas Company, is engaged in the exploration for and production of oil and gas. The company's operations are divided into four geographical and organizational divisions, which are subdivided into districts and then into areas containing groups of producing fields and facilities. The Farmington Area, with which we are primarily concerned, maintains an office at Farmington, New Mexico. It embraces Nevada, Arizona, the western half of New Mexico, and parts of Colorado and Utah. Organizationally, it is a part of the Denver Division.

The evidence in this case shows that operations are largely centralized on a division basis with the division manager exerting overall control from the division headquarters in Denver, Colorado, including the authority to bargain collectively and make final decisions in matters of grievance. The division headquarters authorizes the drilling of wells throughout the division; selects the drilling contractors and awards the contracts for such operation; and handles the legal work, financing, programming and purchasing for the entire Denver Division. Labor

policies, job classifications and employee benefits are uniform throughout the division, and job opportunities and job security are division-wide.

The stability of the Denver Division is reflected in its existence as a continuing organizational entity for more than thirty-four years. In contrast to this stability, area boundaries are frequently changed depending on operating problems and efficient use of personnel, and areas may be discontinued entirely through consolidation with other organizational entities. Employees are frequently transferred between areas within the Denver Division..

Pan American contends that the above evidence, especially that showing centralized control, compels the finding that the only unit appropriate for collective bargaining is one which includes employees throughout the Denver Division. *Cf.* NLRB v. Pinkerton's, Inc., 6 Cir., 428 F2 479; NLRB v. Davis Cafeteria, Inc., 5 Cir., 396 F2 18; NLRB v. Frisch's Big Boy Ill-Mar, Inc., 7 Cir., 356 F2 895. But in NLRB v. Stanolind Oil & Gas Co., 10 Cir., 208 F2 239, 242, we rejected a similar argument made by this same company:

> Stanolind contends that functional integration and centralized management found only in its defined geographical divisions are the rationally acceptable factors for determining the bargaining unit. And pointing to the Board's historical acceptance of these factors in the determination of appropriate bargaining units, it earnestly insists that the Board cannot ignore them in this case. See the Sixteenth (1951) and Seventeenth (1952) Annual Reports of the Board enumerating principal factors considered by the Board in cases of this kind.
>
> But, in determining Stanolind's plant employees to be an appropriate unit, the Board relied upon other

> determining factors which it has likewise utilized in these cases. The Board found the plant employees to be a relatively stable, integrated, cohesive group, with distinctive work functions, separate supervision from the field employees, with different employment and working conditions; that the plant partook of the nature of a manufacturing plant; and that there was little interchange of employees between the field and the plant except in emergencies. In addition, the Board noted that there had been no bargaining for employees of the Rocky Mountain Division, and no other unit sought to represent the division-wide unit.

The record in this case establishes that the designated unit consists of a stable, identifiable group of unrepresentated employees who work in a rather isolated geographic location, and however much the evidence points to the desirability of division-wide collective bargaining, it is nevertheless within the broad discretion of the Board to determine that the lesser unit is also appropriate. *See* NLRB v. Groendyke Transport, Inc., 10 Cir., 417 F2 33; Banco Credito y Ahorro Ponceno v. NLRB, 1 Cir., 390 F2 110; Mountain States Tel. & Tel. Co. v. NLRB, *supra*.

The Farmington Area has remained a relatively stable administrative and geographic subdivision of the company's operations since its creation as a district on January 1, 1961. Up to the time of the proceedings before the trial examiner on November 8, 1968, the Farmington Area was affected by only one of some sixty-three organizational and geographic changes made in the company's domestic divisions. This change, occurring on August 1, 1965, involved merely a shift of the geographic area from what is now the Fort Worth Division to what is now the Denver Division and a reclassification from "District" to "Area." A second change, occurring subsequent to the 1968

hearing, enlarged the boundaries of the Farmington Area to include the State of Nevada. As the Board pointed out, however, the change has not affected the overall supervisory structure of the company from area to district to division nor has it been shown to affect the stability of the employee group in the Farmington Area.

The operations in the Farmington Area are conducted by a crew of approximately twenty-five hourly paid employees in the classifications of pumper, special pumper-isolated, roustabout and operations technician. The union seeks to represent these employees as well as three non-supervisory gas technicians, whose job is to test and verify the volume of production from the various wells. The company argues that the gas technicians should not be included in the unit since they have no mutuality of interest in wages, hours and working conditions with the other production employees and are excluded from the producing department units in the other three divisions. Although the gas technicians are salaried, unlimited hour employees with separate supervision and separate offices from the other unit employees, the evidence also shows that the gas technicians must perform much of their work at the wellhead in collaboration with the pumpers and that some of the gas technicians were formerly pumpers that have been elevated to their new classification. This close contact between the gas technicians and the pumpers makes the inclusion of the gas technicians in the unit at least a debatable question and therefore within the Board's discretion. *See* NLRB v. Dewey Portland Cement Co., 10 Cir., 336 F2 117.

The stability of the employee group sought to be represented is demonstrated by the limited number of transfers actually involving the Farmington Area. Although the company established that during a ten-year period there

had been approximately one hundred transfers of hourly paid employees between areas generally in the Denver Division, only three of these transfers during the last three years were into or out of the Farmington Area, and all of these were pursuant to employees' requests and not company needs. The company also showed overall integration of operations and centralized control from Denver, but the Farmington production employees nevertheless appear to be significantly distinct from similar employees throughout the division. The pumpers and gas technicians perform a portion of their daily work at the area headquarters in Farmington, New Mexico, which the evidence indicates is over two hundred miles from any of the company's other work locations. The employees, except for one gas technician, are supervised in their day-to-day activities by the area superintendent, the area foreman, and six field foremen, all of whom are located in the Farmington Area.[1] These immediate supervisors also administer the first steps in the company's grievance procedure. And finally, although division-wide bargaining has been the rule in the company's other three divisions, there is no history of collective bargaining on a division basis in the Denver Division. To the contrary, the Board has found appropriate, and we have approved, less than division size units within the Denver Division. Stanolind Oil and Gas Co., 116 NLRB 1208; Stanolind Oil and Gas Co., 98 NLRB 973; *enforced*, 10 Cir., 208 F2 239.

Taking into account all the above factors, the Regional Director in the instant case found that the unit sought is comprised of "a stable and identifiable group of employees with common interests and is therefore appropriate." There is substantial evidence to support this conclusion.

[1]The third gas technician reports to the area engineer, whose location the company hierarchy is not identified in the record.

The company contends, however, that the Board has reversed its earlier position as to the inappropriateness of area units without articulating reasons for the change. The integrity of the administrative process does require that the Board distinguish apparently inconsistent findings in cases involving the same employer. *See* NLRB v. Groendyke Transport, Inc., 10 Cir., 372 F2 137, *cert. denied,* 387 U.S. 932. But a close examination of the cases cited by respondent convinces us that the Board has made no unexplained repudiation of past policy as regards this company.

Respondent focuses strongly on the case of Stanolind Oil and Gas Co., 58 NLRB 412, where the Board determined that two area-wide units were inappropriate "[i]n view of the tenative character of the area lines, the frequent interchange of employees, and the uniformity of working conditions and policies throughout the Division . . . ." This decision established a pattern for denying less than division-wide units in two subsequent unreported cases by the Board. The pattern was broken, however, not in the present case but in Stanolind Oil and Gas Co., 98 NLRB 973, *enforced,* 208 F2 239, and Stanolind Oil and Gas Co., 116 NLRB 1208.

In these two cases the Board approved units of production and maintenance employees at the company's Elk Basin and Salt Creek gas recycling plants within what is now the Denver Division. The company made essentially the same arguments against less than division-wide units that it is making here but without success. The Board adequately distinguished its earlier decision:

> "We note that (1) interchangeability of employees and (2) flexibility of area boundaries within divisions due to decline or increase in crude oil production were

> stressed by the Board in its original decision, which — by dismissing a petition for two areas out of a division — set the pattern of division-wide bargaining. In the current proceeding interchange is not present and flexibility of area boundaries offers no reason for denying separate representation to a relatively stable group of plant employees." 98 NLRB at 975-76.

In the instant case, the Regional Director found that a similar distinction exists with respect to the Farmington Area — there is little, if any, interchange of Farmington employees, and at the time of the hearing there were no definite plans to change the boundaries of the Farmington Area, thereby upsetting the stability of the unit sought. The company later petitioned the Board for a new hearing, claiming that the boundaries of the Farmington Area have been enlarged to include the State of Nevada. The Board concluded that a new hearing was unnecessary since a mere change in the geographic scope of the unit did not affect the original finding that the Farmington Area represented "a stable and identifiable group of employees with common interests." In this case, as in the prior cases involving the company's plant employees, the Board has sufficiently addressed itself to the significant factors of employee interchange and flexibility of area boundaries that were relied upon in the Board's original decision.

The order will be enforced.

JUDGMENT

Before: Lewis, Chief Judge; McWilliams and Doyle, Circuit Judges.

THIS CAUSE came on to be heard upon the application of the National Labor Relations Board for the enforcement of a certain order issued by it against the Respondent Pan American Petroleum Corporation, its officers, agents, successors, and assigns on October 16, 1969. The Court heard argument on January 7, 1971, and has considered the briefs and transcript of record filed in this cause. On June 21, 1971, the Court being fully advised in the premises, handed down its decision granting enforcement of the Board's Order.

ON CONSIDERATION WHEREOF, it is hereby ordered and adjudged by the United States Court of Appeals for the Tenth Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and that Pan American Petroleum Corporation, its officers, agents, successors, and assigns abide by and perform the directions of the Board in said Order contained.

Dated: July 14, 1971.
/s/ Robert H. McWilliams
Judge, United States Court of Appeals,
for the Tenth Circuit

APPENDIX D

COMPARISON TABLE

EXCERPTS FROM ARGUMENT IN BOARD'S BRIEF	EXCERPTS FROM COURT'S OPINION
1. The Farmington Area, embracing the State of Arizona, the western one-half of New Mexico, and parts of Colorado and Utah, has remained a stable administrative and geographic subdivision of the Company's operation since its creation as a District on January 1, 1961. The Farmington Area has been affected by only one of sixty-three organizational and geographic changes made in the Company's domestic divisions since that date. The change affecting the Farmington Area, occurring on August 1, 1965, involved a shift of that area, geographically, from what is now the Fort Worth Division to what is now the Denver Division, and a reclassification from "District" to "Area." (Brief, pp. 9-10)	1. The Farmington Area has remained a relatively stable administrative and geographic subdivision of the company's operations since its creation as a district on January 1, 1961. Up to the time of the proceedings before the trial examiner on November 8, 1968, the Farmington Area was affected by only one of some sixty-three organizational and geographic changes made in the company's domestic divisions. This change occurring on August 1, 1965, involved merely a shift of the geographic area from what is now the Fort Worth Division to what is now the Denver Division and a reclassification from "District" to "Area." (App. C, p. 25)

2. Having found that the Farmington Area is a stable geographic unit of the Company's operation, *that producing department employees in this Area are an identifiable, functionally independent and stable group of employees sharing common interests and working conditions apart from the Company's employees in other Areas,* that decisions concerning the immediate day-to-day supervision of these employees are made locally, that there is no history of bargaining for these employees in the unit sought or as a part of the Denver Division, and that no labor organization seeks to represent these employees in a broader unit, the Board concluded that the unit sought is appropriate. (Emphasis added) (Brief, pp. 11-12)

2. The company also showed overall integration of operations and centralized control from Denver, but the Farmington production employees nevertheless appear to be significantly distinct from similar employees throughout the division. (App. C, p. 27)

APPENDIX E

The material provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 76 Stat. 519, 29 U.S.C., Sec. 151 *et seq.*, are as follows:

REPRESENTATIVES AND ELECTIONS

Sec. 9.(b). The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof:

* * * * * * * * *

Sec. 9.(c)(5). In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

LIBRARY
SUPREME COURT, U. S.

In the Supreme Court of the United States

OCTOBER TERM, 1971

AMOCO PRODUCTION COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530

PETER G. NASH,
General Counsel,

NORTON J. COME,
Assistant General Counsel,

[illegible],
Attorney,
National Labor Relations Board,
Washington, D.C. 20570

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-399

AMOCO PRODUCTION COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 22-29) is reported at 444 F. 2d 328. The Board's decision in the unfair labor practice proceeding (Pet. App. 10-21) is reported at 179 NLRB No. 30, and its decision in a related representation proceeding (Pet. App. 5-10) is not reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 30) was entered on July 14, 1971. The petition for a writ of certiorari was filed on September 18, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the National Labor Relations Board abused its discretion to determine appropriate bargaining units by establishing a unit limited to the Farmington Area of the Company's Denver Division, rather than one covering the entire Denver Division.

STATUTE INVOLVED

Relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at Pet. App. 33. Also relevant is:

> Section 8(a) It shall be an unfair labor practice for an employer—
>
> * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

STATEMENT

A. The Representation Proceeding

Petitioner, formerly Pan American Petroleum Corporation and Stanolind Oil and Gas Company (the

"Company"), is engaged in the exploration for, and production of, oil and gas, with principal offices in Tulsa, Oklahoma (Pet. App. 6; R. 7, 12).[1] On October 14, 1968, the Independent Oil Workers Union, Local 16 (the "Union") filed a representation petition with the Board's Regional Director, seeking to represent a unit of all hourly-rated producing, operating, and maintenance employees in the producing department of the Company's Farmington Area (R. 9). The Company opposed the petition, contending that only a unit encompassing the producing department for the Company's Denver Division, which included the Farmington Area, was appropriate (R. 8, 10).

With respect to the unit issue, the evidence adduced showed the following: The Company's domestic operations were divided into four divisions—New Orleans, Houston, Fort Worth, and Denver (R. 7, 13). The Denver Division had four departments; its Producing Department was divided into three geographic districts, the North, Northwest, and South Districts (R. 19-21), and in turn the South District was subdivided into three Areas, one of which (the Farmington Area) was headquartered in Farmington, New Mexico (R. 21-23).

The Farmington Area covered Arizona, the western half of New Mexico, and part of Utah and Colorado (R. 22-23). This area was established as a "District" in January 1961, and was redesignated an

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[1] "R." refers to the appendix to the briefs filed in the court below.

"Area" and transferred to the Denver District in 1965. Though some 28 changes in the geographical or organizational composition of the Denver Division occurred from 1960 to the date of the Board hearing, the boundaries and organization of the Farmington Area remained relatively stable. (R. 28-29, 103-109.) There were no other work locations in the Denver Division within 200 miles of Farmington (R. 83, 115).

Operations in the Farmington Area were conducted by a staff of 8 supervisors and a crew of 25 hourly paid employees in four job classifications (R. 25-26, 74, 181). The area was under the supervision of an Area Superintendent responsible for its operations (R. 68-70). Employees in the area worked under the direct supervision of an area foreman and several field foremen (R. 68-70). The initial steps of the grievance procedure involving these employees were administered within the area (A. 70). Of the 46 (approximately) transfers of hourly-rated employees that were made between areas in the Denver Division in the three years proceeding the hearing, only three were into or out of the Farmington Area, and those were at the request of the transferee (R. 26-27, 71). There was no history of collective bargaining on a division basis in the Denver Division (Pet. App. 8, n.2).

On this evidence, the Regional Director concluded that the employees in the Farmington Area comprised "a stable and identifiable group of employees with common interests," and thus constituted an appropriate unit for bargaining (Pet. App. 8, n.2). The Board

denied the Company's request for review of the Director's decision (Pet. App. 14). The Union won the ensuing election, and was certified as the employees' representative (R. 208-210).

B. The Unfair Labor Practice Proceeding

When the Company subsequently refused to bargain, the General Counsel of the Board, upon charges filed by the Union, issued a complaint alleging that the Company's action violated Section 8(a)(5) and (1) of the Act (R. 212-215). The Company's answer contested the validity of the unit determination (R. 215-235). The General Counsel thereupon moved for judgment on the pleadings on the ground that the unit issue had previously been litigated and determined in the representation case (R. 235-239). The Board granted the General Counsel's motion, issued a decision finding that the Company had violated the Act by refusing to bargain with the Union, and ordered the Company, *inter alia*, to bargain with the Union on request (Pet. App. 10-21). The court of appeals enforced the Board's order (Pet. App. 22-30).

ARGUMENT

Section 9(b) of the Act empowers the Board to "decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof * * *." In this case, the Board determined that an

area-wide, rather than a division-wide, unit was appropriate. That conclusion necessarily turns on the particular facts presented, and hence does not warrant review by this Court.

In any event, the court below correctly concluded that the Board's decision was a reasonable exercise of its broad discretion (see *Packard Motor Car Co.* v. *National Labor Relations Board*, 330 U.S. 485, 491) to determine an appropriate bargaining unit. The Farmington Area has a stable and identifiable work force, as shown by the fact that only a few employees had been transferred in or out in recent years, and even these transfers were due to employee requests, not Company needs. The Area superintendent and his foremen supervised the day-to-day operations of some 28 employees and initially handled grievances. And the Farmington Area headquarters is located some 200 miles from any of the Company's other work locations in the Denver Division. Unlike in other Divisions, there has been no history of division-wide bargaining in the Denver Division, or a request for representation on such basis; indeed, the Board has approved less than division-wide plant units in the Denver Division.[2] These factors fully support the Board's finding that the Farmington Area is an appropriate bargaining unit despite some centralized control from the Divisional office.[3]

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[2] *Stanolind Oil and Gas Co.*, 98 NLRB 973, enforced, 208 F. 2d 239 (C.A. 10); *Stanolind Oil and Gas Co.*, 116 NLRB 1208.

[3] See *National Labor Relations Board* v. *Groendyke Transport, Inc.*, 417 F. 2d 33, 34-35 (C.A. 10), certiorari denied,

There is no basis for petitioner's assertions (Pet. 7-8) that, in handling the instant case, the Board changed its policy with respect to the Company's bargaining units without articulating adequate reasons for its decision, and in effect gave controlling weight to the extent of organization. The cases cited by petitioner (see Pet. 4-5) where the Board disapproved area-wide bargaining for certain Company employees did not involve the Denver Division. Moreover, the stability of the Farmington Area work force distinguishes the present case; as the court below noted (Pet. App. 28-29), this same consideration led the Board to approve (and the court to sustain) less than division-wide units in other cases involving the Company and its Denver Division (see n. 2, *supra*). The Board's reasons for doing so in this case are fully articulated (see Pet. App. 6-8, 13-16), and make plain that the extent of the Union's organization was not given controlling weight.

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397 U.S. 935; *Mountain States Telephone and Telegraph Co.* v. *National Labor Relations Board*, 310 F. 2d 478, 479-480 (C.A. 10); *Banco Credito y Ahorro Ponceno* v. *National Labor Relations Board*, 390 F. 2d 110, 112 (C.A. 1), certiorari denied, 393 U.S. 382; *National Labor Relations Board* v. *Li'l General Stores, Inc.*, 422 F. 2d 571, 574 (C.A. 5).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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